

EXHIBIT K



LEXSEE 2006 U.S. DIST. LEXIS 27673



Analysis

As of: Jul 27, 2009

**RE: LAUNCH, LLC, Plaintiff, v. PC TREASURES, INC. and KAREN SWEET,
Defendants.**

No. C-05-0697 PJH

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

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April 28, 2006, Decided

SUBSEQUENT HISTORY: Summary judgment granted, in part, summary judgment denied, in part by *Relaunch, LLC v. PC Treasures, Inc.*, 2006 U.S. Dist. LEXIS 34763 (N.D. Cal., May 18, 2006)

COUNSEL: [*1] For Relaunch LLC, Plaintiff: Todd Christopher Hedin, MacDonald, Praetzel, Mitchell, Hedin & Breiner, LLP, San Rafael, CA; Andrew R. Margrabe, Greensfelder Hemker & Gale PC, St. Louis, MO; Jason L. Ross, Zachary L. Hammerman, Greensfelder Hemker & Gale PC, St. Louis, MO.

For PC Treasures Inc., Karen Sweet, Defendant: Anna Gorodetsky, Bryan Joseph Wilson, Morrison & Foerster, LLP, Palo Alto, CA; Dennis B. Schultz, Bloomfield Hills, MI; Timothy M. Labadie, Detroit, MI.

For PC Treasures Inc., Karen Sweet, Counter-claimants: Bryan Joseph Wilson, Morrison & Foerster, LLP, Palo Alto, CA.

For Re: Launch LLC, Counter-defendant:

JUDGES: PHYLLIS J. HAMILTON, United States District Judge.

OPINION BY: PHYLLIS J. HAMILTON

OPINION

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT

The motion of plaintiff RE: LAUNCH, LLC ("RE: LAUNCH") for leave to amend the complaint came on for hearing on April 26, 2006. RE: LAUNCH appeared by its counsel Todd Hedin, and defendant PC Treasures, Inc. ("PC Treasures") appeared by its counsel Bryan Wilson. Having carefully reviewed the parties' papers and considered the arguments of counsel and the relevant legal authority, [*2] and good cause appearing, the court hereby grants the motion in part and denies it in part for the reasons stated at the hearing and summarized as follows.

Federal Rule of Civil Procedure 16 requires the court to issue a scheduling order that, among other things, limits the time to join other parties and amend the pleadings. *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294, (9th Cir. 2000). Although *Rule 15* typically

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governs the amendment of complaints, *Rule 16* governs the amendment of a complaint after the deadline provided for amendment of the pleadings in a pretrial order. *Id.* at 1294; *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir.1992). The court treats a motion for leave to amend pleadings after the scheduling order deadline as a motion to modify the scheduling order. *See Coleman*, 232 F.3d at 1294. Pursuant to *Rule 16*, a party may not obtain modification of a pretrial scheduling order "except upon a showing of good cause and by leave of the district judge." *Fed. R. Civ. P. 16(b)*. To establish good cause, [*3] the party seeking modification must show that, despite acting diligently, it cannot reasonably meet the order's schedule. *See Fed. R. Civ. P. 16* advisory committee notes (1983 amendment).

The court's pretrial scheduling order required that any motions for leave to amend pleadings be filed by January 30, 2006. RE: LAUNCH filed its motion on March 16, 2006, and sought leave to amend the complaint to correct its name in the case caption and to add an additional cause of action. RE: LAUNCH has,

however, failed to establish that it acted diligently in discovering the availability of the new cause of action and thus has failed to show good cause for modification of the pretrial scheduling order. Moreover, PC Treasures has established the existence of some prejudice to its interests because it has already filed its motion for summary judgment which does not address the purported new cause of action and insufficient time remains before the dispositive motions deadline to challenge the new claim. Accordingly, RE: LAUNCH's motion as it relates to the additional cause of action is DENIED. However, because PC Treasures does not object to a correction [*4] of plaintiff's name, RE: LAUNCH's motion as it relates to plaintiff's name change is GRANTED.

IT IS SO ORDERED.

Dated: April 28, 2006

PHYLLIS J. HAMILTON

United States District Judge